

# SB1661



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1661

Introduced 2/13/2013, by Sen. Gary Forby

#### SYNOPSIS AS INTRODUCED:

820 ILCS 305/1	from Ch. 48, par. 138.1
820 ILCS 405/212	from Ch. 48, par. 322

Amends the Workers' Compensation Act and the Unemployment Insurance Act. Provides that individuals who own or hold under a bona fide lease a motor vehicle that the individual then leases to a motor carrier and operates under a written agreement with the motor carrier that specifies that the arrangement involves an independent contractor relationship are not covered by the Acts.

LRB098 08982 JLS 39117 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by  
5 changing Section 1 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation  
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,  
11 incorporated village, school district, body politic, or  
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,  
14 including hospitals, public service, eleemosynary, religious  
15 or charitable corporations or associations who has any person  
16 in service or under any contract for hire, express or implied,  
17 oral or written, and who is engaged in any of the enterprises  
18 or businesses enumerated in Section 3 of this Act, or who at or  
19 prior to the time of the accident to the employee for which  
20 compensation under this Act may be claimed, has in the manner  
21 provided in this Act elected to become subject to the  
22 provisions of this Act, and who has not, prior to such  
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred  
3 to in subsections 1 and 2 of Section 3 of this Act who  
4 undertakes to do any work enumerated therein, is liable to pay  
5 compensation to his own immediate employees in accordance with  
6 the provisions of this Act, and in addition thereto if he  
7 directly or indirectly engages any contractor whether  
8 principal or sub-contractor to do any such work, he is liable  
9 to pay compensation to the employees of any such contractor or  
10 sub-contractor unless such contractor or sub-contractor has  
11 insured, in any company or association authorized under the  
12 laws of this State to insure the liability to pay compensation  
13 under this Act, or guaranteed his liability to pay such  
14 compensation. With respect to any time limitation on the filing  
15 of claims provided by this Act, the timely filing of a claim  
16 against a contractor or subcontractor, as the case may be,  
17 shall be deemed to be a timely filing with respect to all  
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this  
20 subsection he may recover the amount thereof from the  
21 contractor or sub-contractor, if any, and in the event the  
22 contractor pays compensation under this subsection he may  
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the  
25 accident occurs elsewhere than on, in or about the immediate  
26 premises on which the principal has contracted that the work be

1 done.

2 4. Where an employer operating under and subject to the  
3 provisions of this Act loans an employee to another such  
4 employer and such loaned employee sustains a compensable  
5 accidental injury in the employment of such borrowing employer  
6 and where such borrowing employer does not provide or pay the  
7 benefits or payments due such injured employee, such loaning  
8 employer is liable to provide or pay all benefits or payments  
9 due such employee under this Act and as to such employee the  
10 liability of such loaning and borrowing employers is joint and  
11 several, provided that such loaning employer is in the absence  
12 of agreement to the contrary entitled to receive from such  
13 borrowing employer full reimbursement for all sums paid or  
14 incurred pursuant to this paragraph together with reasonable  
15 attorneys' fees and expenses in any hearings before the  
16 Illinois Workers' Compensation Commission or in any action to  
17 secure such reimbursement. Where any benefit is provided or  
18 paid by such loaning employer the employee has the duty of  
19 rendering reasonable cooperation in any hearings, trials or  
20 proceedings in the case, including such proceedings for  
21 reimbursement.

22 Where an employee files an Application for Adjustment of  
23 Claim with the Illinois Workers' Compensation Commission  
24 alleging that his claim is covered by the provisions of the  
25 preceding paragraph, and joining both the alleged loaning and  
26 borrowing employers, they and each of them, upon written demand

1 by the employee and within 7 days after receipt of such demand,  
2 shall have the duty of filing with the Illinois Workers'  
3 Compensation Commission a written admission or denial of the  
4 allegation that the claim is covered by the provisions of the  
5 preceding paragraph and in default of such filing or if any  
6 such denial be ultimately determined not to have been bona fide  
7 then the provisions of Paragraph K of Section 19 of this Act  
8 shall apply.

9 An employer whose business or enterprise or a substantial  
10 part thereof consists of hiring, procuring or furnishing  
11 employees to or for other employers operating under and subject  
12 to the provisions of this Act for the performance of the work  
13 of such other employers and who pays such employees their  
14 salary or wages notwithstanding that they are doing the work of  
15 such other employers shall be deemed a loaning employer within  
16 the meaning and provisions of this Section.

17 (b) The term "employee" as used in this Act means:

18 1. Every person in the service of the State, including  
19 members of the General Assembly, members of the Commerce  
20 Commission, members of the Illinois Workers' Compensation  
21 Commission, and all persons in the service of the University of  
22 Illinois, county, including deputy sheriffs and assistant  
23 state's attorneys, city, town, township, incorporated village  
24 or school district, body politic, or municipal corporation  
25 therein, whether by election, under appointment or contract of  
26 hire, express or implied, oral or written, including all

1 members of the Illinois National Guard while on active duty in  
2 the service of the State, and all probation personnel of the  
3 Juvenile Court appointed pursuant to Article VI of the Juvenile  
4 Court Act of 1987, and including any official of the State, any  
5 county, city, town, township, incorporated village, school  
6 district, body politic or municipal corporation therein except  
7 any duly appointed member of a police department in any city  
8 whose population exceeds 500,000 according to the last Federal  
9 or State census, and except any member of a fire insurance  
10 patrol maintained by a board of underwriters in this State. A  
11 duly appointed member of a fire department in any city, the  
12 population of which exceeds 500,000 according to the last  
13 federal or State census, is an employee under this Act only  
14 with respect to claims brought under paragraph (c) of Section  
15 8.

16 One employed by a contractor who has contracted with the  
17 State, or a county, city, town, township, incorporated village,  
18 school district, body politic or municipal corporation  
19 therein, through its representatives, is not considered as an  
20 employee of the State, county, city, town, township,  
21 incorporated village, school district, body politic or  
22 municipal corporation which made the contract.

23 2. Every person in the service of another under any  
24 contract of hire, express or implied, oral or written,  
25 including persons whose employment is outside of the State of  
26 Illinois where the contract of hire is made within the State of

1 Illinois, persons whose employment results in fatal or  
2 non-fatal injuries within the State of Illinois where the  
3 contract of hire is made outside of the State of Illinois, and  
4 persons whose employment is principally localized within the  
5 State of Illinois, regardless of the place of the accident or  
6 the place where the contract of hire was made, and including  
7 aliens, and minors who, for the purpose of this Act are  
8 considered the same and have the same power to contract,  
9 receive payments and give quittances therefor, as adult  
10 employees.

11 3. Every sole proprietor and every partner of a business  
12 may elect to be covered by this Act.

13 An employee or his dependents under this Act who shall have  
14 a cause of action by reason of any injury, disablement or death  
15 arising out of and in the course of his employment may elect to  
16 pursue his remedy in the State where injured or disabled, or in  
17 the State where the contract of hire is made, or in the State  
18 where the employment is principally localized.

19 However, any employer may elect to provide and pay  
20 compensation to any employee other than those engaged in the  
21 usual course of the trade, business, profession or occupation  
22 of the employer by complying with Sections 2 and 4 of this Act.  
23 Employees are not included within the provisions of this Act  
24 when excluded by the laws of the United States relating to  
25 liability of employers to their employees for personal injuries  
26 where such laws are held to be exclusive.

1           The term "employee" does not include persons performing  
2 services as real estate broker, broker-salesman, or salesman  
3 when such persons are paid by commission only. The term  
4 "employee" does not include an individual who owns or holds  
5 under a bona fide lease a motor vehicle that the individual  
6 leases to a motor carrier and who personally operates the  
7 leased equipment under a written agreement with the motor  
8 carrier that specifies that the operations involve an  
9 independent contractor relationship.

10           (c) "Commission" means the Industrial Commission created  
11 by Section 5 of "The Civil Administrative Code of Illinois",  
12 approved March 7, 1917, as amended, or the Illinois Workers'  
13 Compensation Commission created by Section 13 of this Act.

14           (d) To obtain compensation under this Act, an employee  
15 bears the burden of showing, by a preponderance of the  
16 evidence, that he or she has sustained accidental injuries  
17 arising out of and in the course of the employment.

18           (Source: P.A. 97-18, eff. 6-28-11; 97-268, eff. 8-8-11; 97-813,  
19 eff. 7-13-12.)

20           Section 10. The Unemployment Insurance Act is amended by  
21 changing Section 212 as follows:

22           (820 ILCS 405/212) (from Ch. 48, par. 322)

23           Sec. 212. Service performed by an individual for an  
24 employing unit, whether or not such individual employs others

1 in connection with the performance of such services, shall be  
2 deemed to be employment unless and until it is proven in any  
3 proceeding where such issue is involved that--

4 A. Such individual has been and will continue to be  
5 free from control or direction over the performance of such  
6 services, both under his contract of service and in fact;  
7 and

8 B. Such service is either outside the usual course of  
9 the business for which such service is performed or that  
10 such service is performed outside of all the places of  
11 business of the enterprise for which such service is  
12 performed; and

13 C. Such individual is engaged in an independently  
14 established trade, occupation, profession, or business.

15 An individual who owns or holds under a bona fide lease a  
16 motor vehicle that the individual leases to a motor carrier and  
17 who personally operates the leased equipment under a written  
18 agreement with the motor carrier that specifies that the  
19 operations involve an independent contractor relationship is  
20 an independent contractor.

21 (Source: Laws 1951, p. 32.)